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APPELLANT PRO SE:

**GREGORY TODD GRIFFEY**  
Pendleton, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**ELLEN H. MEILAENDER**  
Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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GREGORY TODD GRIFFEY,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 20A04-0609-CR-481
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

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APPEAL FROM THE ELKHART CIRCUIT COURT  
The Honorable Gene R. Duffin, Judge  
Cause No. 20C01-9405-FC-033

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**March 29, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-petitioner Gregory Todd Griffey appeals from the denial of his petition for permission to file a belated notice of appeal. In essence, Griffey claims that the trial court abused its discretion in denying his petition because no hearing was held and he was “denied the right to have . . . counsel . . . appointed to be able to investigate his case to determine that he could be able to file permission to file a belated notice [of] appeal.” Appellant’s Br. p. i, 4. Concluding that Griffey failed to file his notice of appeal in a timely manner, we dismiss the appeal.

### FACTS

On May 12, 1994, Griffey was charged with murder. Thereafter, on February 9, 1995, Griffey pleaded guilty to that offense. The plea agreement capped the sentence at forty years, and the parties agreed that the sentencing range for murder applicable at the time was thirty to sixty years with a “standard” term of forty years. Appellant’s App. p. 46. The trial court commented at the guilty plea hearing that Griffey and his counsel “would be free to argue for a minimum sentence of thirty years.” Id.

Griffey had a prior conviction for battery involving the same victim, which the trial court identified as an aggravating circumstance. While the trial court determined that this factor slightly outweighed the sole mitigating factor—Griffey’s expression of remorse—it accepted the agreement and imposed a sentence of forty years.

Griffey filed a petition for post-conviction relief on August 31, 1995, but he withdrew that petition on April 20, 2000. Griffey also filed subsequent petitions that he ultimately withdrew from the trial court’s consideration. On October 6, 2005, Griffey filed a motion for

modification of sentence, which the trial court denied. Thereafter, Griffey filed a petition requesting permission to file a belated notice of appeal on June 9, 2006, which the trial court summarily denied that same day. On August 24, 2006, Griffey filed his notice of appeal.

### DISCUSSION AND DECISION

In addressing Griffey's contention that the trial court erred in denying his petition to file a belated notice of appeal, we note that pursuant to Indiana Appellate Rule 9, a notice of appeal must be filed within thirty days after the entry of a final judgment. The failure to file a notice of appeal in a timely manner is a jurisdictional bar that forfeits the right to appeal, except as provided by Post-Conviction Rule 2.<sup>1</sup> Ind. Appellate Rule 9(A)(5); Davis v. State, 771 N.E.2d 647, 648-49 (Ind. 2002).

In this case, the final judgment that Griffey is attempting to appeal is the trial court's order of June 9, 2006. However, as noted above, Griffey did not file his notice of appeal until August 24, 2006, which is well after the thirty-day deadline had expired. Appellant's App. p. 8, 39-40.

While Griffey claimed in the notice of appeal that he did not receive a copy of the trial

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<sup>1</sup> In relevant part, Post-Conviction Rule 2 provides that

Where an eligible defendant convicted after a trial or plea of guilty fails to file a timely notice of appeal, a petition for permission to file a belated notice of appeal for appeal of the conviction may be filed with the trial court, where:

- (a) the failure to file a timely notice of appeal was not due to the fault of the defendant; and
- (b) the defendant has been diligent in requesting permission to file a belated notice of appeal under this rule.

...

court's order until July 31, 2006, there is nothing in the record suggesting that Griffey ever attempted to seek relief from the trial court to excuse his failure to file the notice of appeal in a timely manner. Moreover, it is not clear from the record whether Griffey could, in fact, establish good cause for that failure. As a result, this court lacks jurisdiction over this appeal, and the appeal must be dismissed.

Appeal dismissed.<sup>2</sup>

DARDEN, J., and ROBB, J., concur.

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If the trial court finds no grounds for permitting the filing of a belated notice of appeal, the defendant may appeal such denial by filing a notice of appeal within thirty (30) days of said denial.

<sup>2</sup> As an aside, we note that Griffey raised numerous claims in a petition for post-conviction relief that he filed in November 2001. However, Griffey never challenged the validity or appropriateness of his sentence in that petition. Also, while Griffey had submitted other petitions that were ultimately withdrawn, he has failed to include those petitions in his appendix. Thus, Griffey has not demonstrated that he sought to challenge the validity of the sentence in any of those proceedings. Moreover, Griffey was sentenced in 1995 and has been incarcerated in the Department of Correction. During the eleven-year period between 1995 and 2006, Griffey certainly had access to legal materials and could have discovered his right to directly appeal a sentence and/or the process for doing so that is set forth in Post-Conviction Rule 2. Thus, it is apparent that Griffey has failed to show that he was diligent in requesting permission to file a belated appeal.